

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that)	
AT&T's Phone-to-Phone IP Telephony)	WC Docket No. 02-361
Services are Exempt from Access)	
Charges)	

**Reply Comments of the
Regulatory Commission of Alaska**

Date: January 24, 2003

 /s/
G. Nanette Thompson, Chair
Regulatory Commission of Alaska

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The Regulatory Commission of Alaska (RCA) appreciates the opportunity to respond to the Public Notice (DA 02-3184) seeking reply comment on the Petition for Declaratory Rulemaking filed by AT&T Corporation (AT&T) requesting exemption from payment of access charges for AT&T Phone-to-Phone IP Telephony Services.¹

Summary

We agree with those commentators who recommend that the AT&T's petition should not be granted at this time. AT&T's petition and exemption request raises numerous policy and procedural questions and has the potential to materially and negatively affect consumers. While we support the policy of encouraging the development of the network to include this technology, the communications for which this petition seeks exemption would be largely carried on the public switched network without payment of inter- or intrastate access charges. AT&T's proposal would also unreasonably limit our ability to regulate and assess charges for intrastate access services. To the extent that existing means of local

¹Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges, filed October 18, 2002.

carrier compensation such as access charges are inequitable, the Commission should expeditiously open a proceeding to develop a record and explore solutions.

1. AT&T's long distance services are not information services. Miscategorizing common carrier services as information services could lead to premature deregulation of local telecommunications markets and compromise interconnection requirements.

At the heart of the AT&T petition is the issue of whether phone-to-phone Internet-based services are a telecommunications or information service. We support the comments of the New York Department of Public Service (NYDPS), the New Hampshire Public Utilities Commission (NHPUC), and numerous others that the toll services in question are by definition telecommunications services and not information services. We also agree with the Alaska Exchange Carriers Association, Inc. (AECA) and others that state it would be unreasonable to treat standard voice services as information services and waive access fees merely because at some point in transmission a carrier might have used Internet protocols.

If IP telephony is miscategorized as an information service, it could open the door to premature deregulation of long distance and local services, including services by monopoly carriers.² Providers of local or toll service using IP technology within their networks could argue that none of their services were telecommunications services subject to state regulation or the provisions of Title II of the Communications Act, as amended by the Telecommunications Act of 1996 (the Act). This could compromise the ability of state and federal regulators to require interconnection, resale, number portability, reciprocal

²In Alaska, the dominant long distance carrier and incumbent local carriers retain facility monopolies in many rural areas. We have not deregulated intrastate long distance services or local services throughout Alaska.

compensation, reasonable rate practices, compliance with the rate averaging requirements of Section 254(g) of the Act, and carrier of last resort obligations.³ Carriers could potentially avoid all common carrier requirements by simply making minor cosmetic changes to their networks to include IP technology.

2. Further restructuring of the access charge system should occur in an organized manner after full review and opportunity for comment.

As stated by the NHPUC and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the FCC in its Report to Congress has already found that it may be appropriate for internet telephony to pay access charges:

[T]o the extent we conclude that certain forms of phone-to-phone IP telephony services are “telecommunications service,” and to the extent that the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges.⁴

We agree with NHPUC that AT&T seeks to revise the above findings and other statements made in the FCC Report to Congress without new evidence and without the record that the Commission would desire. Technology may have overcome the current flaws in the access charge system and the Commission should develop a record to

³For example, the interconnection and reciprocal compensation requirements of 47 U.S.C. 251(a) apply to “telecommunications carriers” and not information providers. Similarly under Section 254(g), interexchange carriers are required to charge comparable telecommunications service rates to rural and urban areas both nationally and within a state (i.e., rate integration). However, if phone-to-phone telephony is deemed an information service and not a telecommunications service, then the requirements of 254(g) may no longer apply. Alaskans would be unfairly disadvantaged if a carrier could bypass rate integration obligations under the Act based on the technology chosen to provide service.

⁴*In the Matter of Federal-State Joint Board on Universal Service*, (CC Docket No. 96-45) Report to Congress, 13 FCC Record 11501 ¶ 91(April 10, 1998).

determine options and select the best solution to correct those flaws. As the NHPUC states, if the Commission wants to eliminate access charges, it should do so explicitly and on its merits and not indirectly by allowing carriers to bypass payment of access charges.⁵ The AT&T petition, rather than providing a solution, creates an opportunity for use of the local network without compensation to its owners. We agree with the NYPSC that the Commission should seek a cohesive solution to the existing problem of similar carriers paying differently for use of the local network.

3. The FCC should not preempt state authority over intrastate access services or require exemption of intrastate access fees for IP-based calls.

AT&T petitions for exemption from both intrastate and interstate access charges. We concur with the AECA comments opposing state preemption from regulating or assessing access charges. The NHPUC is correct when it noted that differing decisions among states do not constitute a crisis requiring Commission intervention, but rather reflects the valid differences in intrastate jurisdiction allowed by the Telecommunications Act. If granted, the AT&T petition would also undermine the Commission's and our own efforts towards access charge reform in our state by simply eliminating access charges. We believe that preemption of state authority is neither necessary nor justified.

4. Granting the petition could lead to material local rate increases in Alaska.

We concur with AECA that someone will have to pay to maintain and provide the facilities that AT&T and other interexchange carriers use to originate and terminate their long distance services. As stated by AECA there are only three practical sources of revenue to cover the costs of such facilities and services: access charges, local rates, and

⁵*Comments of the New Hampshire Public Utilities Commission at 5-6.*

universal service. AT&T does not consider who will have to pay for the local exchange carrier's facilities.

AECA indicates that its intrastate access charge pool is approximately \$31.8 M.⁶ However, the AECA figure represents only a portion of Alaska's intrastate access system. In total, intrastate access charges in Alaska are roughly \$50.4 M annually and constitute a significant portion of the local exchange carriers' revenues.⁷ Alascom, an AT&T affiliate, pays a substantial portion of this \$50.4 M. With Alaska's limited population base and numerous small, rural, high-cost local companies, exemption of some or all of these intrastate access fees will materially impact Alaskan consumers who will have to absorb the costs. The impact of this exemption may be as much as \$40 a line per month in some areas of the state.⁸ There is no assurance that any local payments made in lieu of access fees will materially offset the loss in access charge revenues.

As local service costs increase as a result of granting the petition, so would the need for federal universal service funding. However, by reclassifying its long distance service as an "information service" and by no longer paying interstate access, AT&T may substantially avoid contributing to the federal universal service mechanism. To the extent other long distance companies are treated as information service providers, their services

⁶*The Alaska Exchange Carriers Association, Inc.'s Comments in Opposition to AT&T's Petition for Declaratory Ruling* at 9.

⁷Order R-01-01(1) at 8 (April 11, 2001). Regulatory Commission of Alaska orders are public records, copies of which are available online at www.state.ak.us/rca/orders/index.html.

⁸Intrastate access common line costs range between \$4 and \$40 per line depending upon the local company. Order R-01-01(1) at 11 (April 11, 2001). If switching and other access fees were waived, the per line estimate would increase. In many of our rural areas, AT&T Alascom remains the primary carrier and exemption of some or all of its intrastate and/or interstate access charges would materially affect our state and rural companies.

may also be exempt from payment of universal service contributions. This places further pressure on the fund substantially increasing its size at the same time that the contribution base decreases under the AT&T proposal. We therefore agree with OPASTCO that AT&T has not adequately defended its assertion that its proposal will not affect universal service.⁹ Nor has AT&T explained how its proposal will ensure continued equitable and non-discriminatory contribution towards the fund, consistent with Section 254(b)(4).

5. Approving the petition would allow AT&T to obtain access at a below cost rate, benefiting from universal service funding designed to ensure affordable local rates.

AT&T's petition indicates that it desires to originate and terminate its interexchange IP telephony services using local services instead of access services to obtain a rate benefit. OPASTCO states in part, that providing interexchange carriers with below cost access to the local loop through end-user rates conflicts with Section 254 of the Act. We agree that this conflict exists. Local rates are often priced below cost as consumers receive reduced rates due to the state and federal universal service fund mechanisms. Allowing AT&T to purchase local rates to originate and terminate its toll services would therefore allow AT&T to benefit from state and federal universal service funds not intended to support toll services.

In addition, in Alaska local rates are priced on a flat fee basis. As a result, the rates are not designed to recover the costs of originating and terminating high volume toll calls. Any local service payments made by AT&T in lieu of access charges might, therefore, fail to cover the actual costs incurred to provide service to AT&T.

AT&T has not explained why it should be allowed to benefit from universal

⁹*Comments of the Organization for the Promotion and Advancement of Small*

service funding designed for local services and how its proposal is consistent with Section 254 provisions governing intended uses and purposes for the federal universal service fund.

We believe that subsidies should not be allowed unless they achieve a specific public interest goal. AT&T has not explained how allowing it to benefit from state and federal universal service funds is of net benefit to the public. For example, AT&T has made no commitment to improve infrastructure, reduce rates, or increase quality of service in light of the benefits gained by its proposal. The FCC should not grant the proposal absent a clearly defined public benefit.

Congress allowed the Commission flexibility to determine when subsidy was appropriate, subject to certain guiding principles and goals. When considering AT&T's petition, the Commission should review whether a) AT&T toll services constitute a "universal service" which should benefit from universal service funding; b) granting the petition will inadvertently lead to unplanned and undue growth for both state and federal universal service funds, potentially compromising these funds; and c) granting the proposal compromises the Commission's contribution methodology or other principles identified in Section 254 of the Act.

6. AT&T's petition proposes an unjustified technology bias.

The NYPSC states that the Commission should not condone a regulatory scheme that treats similar uses of the local network differently based on the technology of the interexchange carrier. We agree that the AT&T petition appears to be technology biased. For example, while providing identical services, only those interexchange carriers that had converted part of their network to an IP base would be exempt from access

Telecommunications Companies at 4.

payments and would benefit from the universal service subsidies associated with local rates.

Such bias is inconsistent with Commission policy that subsidies should be provided to carriers on a technology neutral basis:

Technological neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technological neutrality, we will avoid limiting providers of universal service to modes of delivering that service that are obsolete or not cost effective. . . . We anticipate that a policy of technological neutrality will foster the development of competition¹⁰

Further, the FCC might not need to provide regulatory incentives for AT&T to build or replace its network using IP based technology. We agree with the Rural Iowa Independent Telephone Association (RIITA) that

[i]f internet transmission of calls is really more efficient and AT&T can maintain the quality of its transmission (both of which are unsupported assertions in the AT&T petition), then AT&T could presumably migrate over to packet internet transmission while paying access and reap the profit of its new and efficient long distance network.¹¹

Market forces alone may provide necessary incentives for AT&T to timely upgrade its plant to new technology, without subsidy from other customers or dramatic changes in policy that may create unintended consequences.

7. The proposal should not be adopted without a better understanding of what calls would qualify for the access exemption and how application of the exemption may be audited and verified.

Various internet service providers and associations¹² generally support the AT&T petition and state that the Commission should remove any uncertainty that may be

¹⁰CC Docket No. 96-45, *Report and Order*, ¶ 49, FCC 97-157, released May 8, 1997.

¹¹*Comments of the Rural Iowa Independent Telephone Association* at 4.

¹²See *Joint Comments of the American Internet Service Providers Association; The California Internet Service Providers Association; The Connecticut ISP Association; CORE*

created by recent incumbent carriers' attempts to impose access charges on any form of IP telephony. We disagree that approving the AT&T petition will eliminate uncertainty. Exempting access charges for any form of IP Telephony will actually create more uncertainty.

It is unclear what calls would qualify for exemption. For example, AT&T appears to object to paying access charges for calls that are transmitted only partially over a packet switched network.¹³ Generally, commentators appear to assume that AT&T's proposal would exempt access fees even if only a fraction of the call path was completed over an IP based network. NHPUC suggests that AT&T may be able to classify a primarily circuit based call between Pittsburg and Pelham, New Hampshire by the simple process of routing the call "a few feet to its IP servers and back to its switch, and direct the call out to the terminating end user."¹⁴ In a similar example, in Alaska, Alascom, Inc., (Alascom), a subsidiary of AT&T, completes a large portion of AT&T's Alaska originated and terminated long distance calls using satellite, microwave and other technologies. It would appear possible that AT&T could obtain exemption of Alaska access charges on calls when only a

Communications, Inc.; Grande Communications, Inc.; The New Mexico Internet Professionals Association; Pulver.Com; and US DataNet Corporation at 16.

¹³"[W]hile AT&T has elected to use access services to originate its calls, AT&T has terminated its phone-to-phone IP telephony services over the same local facilities that terminate its ISP traffic: principally, private lines obtained from CLECs and ILECs, with the CLECs terminating calls on reciprocal compensation trunks if the called party is an ILEC customer. . . . Because they are taking the position that the business lines and other local facilities are available only for 'computer-to-phone' and 'computer-to-computer' telephony services, certain ILECs are (1) refusing properly to provision local business lines to terminate phone-to-phone IP telephony services, (2) taking down local business lines that they discover are being used to terminate such calls, or (3) using Calling Party Number identifiers to assess interstate (and intrastate) access charges on phone-to-phone calls that terminate over reciprocal compensation trunks." *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, at 4-5.

relatively minor section of the long distance call passes over AT&T's IP network.

We submit that application of the exemption will create significant uncertainty as carriers challenge whether the exemption was rightfully applied. The meaning of the term "phone-to-phone IP telephony" itself is uncertain if carriers may obtain exemption by making minor cosmetic changes to their networks and still qualify for exemption.

In Alaska, at least one local carrier is modifying parts of its network to an IP-based system. If the total call is eligible for exemption if any segment of the call is placed over an IP system, then when our local carrier converts to IP technology, it is possible that most if not all long distance calls placed to that local carrier would be eligible for exemption. This will create additional uncertainty over whether the exemption itself has meaning.

Further uncertainty is raised by the fact that long distance resellers often employ a variety of carriers to complete their long distance calls and on any one call might not know the technology used to complete the call. Calls would likely be completed over a mix of both IP-based and circuit-based technology. Significant uncertainty would exist concerning when the reseller would be eligible for access exemption. Should the reseller obtain exemption even though it might own no IP facilities itself?

It is also unclear whether adequate tracking mechanisms exist to make certain that the exemption is properly applied. If the states and the Commission are unable to audit and verify exemption, it will place the validity of the entire access charge and exemption systems into question, making these systems unsustainable.

Uncertainty about which calls should qualify for exemption, and whether the exemption as proposed can be fairly applied, suggest that the AT&T proposal requires

¹⁴*Comments of the New Hampshire Public Utilities Commission* at 6.

significant refinement. It may be difficult to exempt calls given the complexity of the network. Without a clear definition, it may not be possible to fairly implement the AT&T proposal. This further supports the position that if there is a problem with the assessment of interstate access fees, it should be addressed directly and not indirectly by promoting arbitrage and bypass.

We also submit that significant uncertainty in the market will be created when incumbent carriers are denied the opportunity to recover access costs as carriers randomly convert to IP technology to avoid access fees. There will be no predictability to how quickly access charge revenues will decrease. Nor is there certainty on how, if at all, local carriers would be able to recover their access costs.

8. Granting the petition may affect jurisdictional cost assignment policies, potentially leading to large, unplanned cost shifts to the local jurisdiction and increases in the universal service fund.

The National Telecommunications Cooperative Association (NTCA) states that the AT&T proposal raises serious questions concerning jurisdictional separations that should be referred to the Federal-State Joint Board. We agree. However we believe NTCA may have understated the problem in this area.

The Commission has recently frozen the allocation factors that apply to cost assignments between the state and federal jurisdiction. As a result of the freeze, under the AT&T proposal, a local carrier's cost of interstate access could be artificially high because these costs would be calculated assuming AT&T IP minutes were still toll (and not local) in nature. Yet under AT&T's proposal, it would no longer be paying towards recovery of any of these access costs. This raises the question of whether AT&T's proposal, in light of the freeze, compromises the link between cost causer and cost payer, resulting in unrealistic

separations factors affecting rates, infrastructure development and competition in the market.

In the alternative, the Commission might lift its jurisdictional separations freeze. If this were to occur, and AT&T's toll IP traffic was deemed "local" in nature, then the local exchange carrier (LEC) processing those calls would have a significant increase in its "local" minutes relative to all other minutes. As a result, greater percentages of the LEC's total costs would be shifted to the local jurisdiction for recovery from local rates. Many local carriers in Alaska remain under rate of return regulation and could be forced to raise local rates to recover these additional costs. Such local rate increases may outweigh any perceived benefit derived from the AT&T proposal.

We also agree with NTCA that exempting phone-to-phone IP telephony and other Voice Over the Internet Services from access charges without first accounting for the jurisdictional separations would likely result in improperly preempting state commission jurisdictions and could raise issues of confiscation.¹⁵ The Commission should not unintentionally mandate reciprocal compensation or any other type of cost recovery for the obvious use of the local networks without considering the jurisdictional cost shifts involved.

Conclusion

The AT&T petition should not be implemented as proposed. The proposal is vague and problematic. To the extent access charge reforms are needed, that reform should only occur after investigation of all options. The consequences of the AT&T proposal for the rest of the industry and consumers should be fully evaluated. AT&T's proposal is

¹⁵*National Telecommunications Cooperative Association Initial Comments* at 6.

sufficiently vague that it is likely to increase instability in a rapidly evolving market. The Commission should not approve the petition absent a showing that there will be a resulting net benefit to consumers. We oppose federal preemption of intrastate access charge policies.

RESPECTFULLY SUBMITTED this 24th day of January, 2003.

//s//

G. Nanette Thompson, Chair
Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501-3469
Telephone: 907-276-6222